IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

B.W., et al.	:	CA 3:09-cv-286
v.	:	
Powell, et al	:	

Conway, et al.	:	CA 3:09-cv-291
v.	:	
Conahan, et al.	:	

H.T., et al.	:	
v.	:	CA 3:09-cv-357
Ciavarella, et al.	:	

Humanik	:	
	:	CA 3:09-cv-630
v.	:	
Ciavarella, et al.	:	

Judge Caputo

BRIEF IN SUPPORT OF MOTION TO DISMISS BY MID-ATLANTIC YOUTH SERVICES CORP, PA CHILD CARE, LLC AND WESTERN PA CHILD CARE, LLC

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES:

Statutes:

Rules of Court:

Other Authorities:

BRIEF IN SUPPORT OF MOTION TO DISMISS BY MID-ATLANTIC YOUTH SERVICES CORP, PA CHILD CARE, LLC AND WESTERN PA CHILD CARE, LLC

I. PROCEDURAL BACKGROUND

Numerous juveniles who appeared before Judge Mark A. Ciavarella ("Ciavarella") in the Juvenile Division of the Court of Common Pleas of Luzerne County ("Juveniles"), and the Juveniles' parents ("Parents") have sued in this Court: Ciavarella and ex- Judge Michal T. Conahan ("Conahan") (collectively, "judges"); Beverage Marketing of PA, Inc., a corporation owned by Conahan; the judges' wives, Cindy Ciavarella, and Barbara Conahan; Pinnacle Group of Jupiter, LLC, a limited liability company owned by the wives; Robert Mericle ("Mericle") and his construction company, Mericle Construction Inc.; Robert Powell ("Powell"), his law firm, Powell Law Group, P.C. and his limited liability company, Vision Holdings, LLC; Perseus House, Inc., a juvenile treatment facility; Luzerne County; Frank Vita, a psychologist on contract to Luzerne County; Mid-Atlantic Youth Services Corp. ("MAYS"), and two limited liability companies that own juvenile treatment facilities that MAYS contracts to operate, PA Child Care, LLC ("PACC") and Western PA Child Care, LLC ("WPACC") (MAYS, PACC and WPACC will be referred to collectively as "Provider Defendants"). Plaintiffs initially sued Gregory Zappala

("Zappala"), allegedly an owner, shareholder, officer, or operator of MAYS, PACC and WPACC, but voluntarily dismissed him.[1]

Originally, there were two class action complaints (*H.T, et al. v. Ciavarella, et al., 3:09-cv-0357 and Conway, et al. v. Conahan, et al., 3:09-cv-0291*) and two complaints by individuals (*Wallace et al v. Powell, et al, 03:09-cv-0286 and Humanik v. Ciavarella, et al., 03:09-cv-0630*). After several amendments and consolidations the operative complaints have been reduced to a *Master Complaint for Class Actions at 3:09-cv-0357 and 3:09-cv-0291* ("Master Class Complaint" or "MCC") and an *Individual Plaintiffs' Long Form Complaint at 03:09-cv-0286 and 03:09-cv-0630* ("Master Individual Complaint" or "MIC"). (The MCC and MIC will be referred to collectively as the "Complaints".) This Court has disposed of motions to amend, as well as motions to dismiss based upon immunity and abstention. Pursuant to the Court's case management order, now is the time for other Rule 12 motions. Some Defendants, including Provider Defendants, have filed a common motion to dismiss and supporting brief addressing issues common to them. The Provider Defendants file this brief in support of their Rule 12 motions in order to address issues more

[1] Plaintiffs also dropped Sandra Brulo and Robert Matta from the suit.

specifically related to them or to more specifically apply arguments to their circumstances.

II. SUMMARY OF FACTS

Based upon documents attached to the Complaints, Plaintiffs allege upon information and belief that Powell and Mericle paid Ciavarella and Conahan $2,600,000.00 for exercising the judges' official discretion to help Powell and Zappala to build and to expand the PACC and WPACC facilities, and to place juveniles in the PACC and WPACC facilities operated by MAYS. The complaints aver that Civarella, Conahan, Powell and Mericle took actions directly and through Pinnacle, Beverage Marketing and Vision Holdings to conceal the payments. Allegedly in order to accomplish placement of Juveniles, Ciavarella routinely violated their rights to an impartial tribunal, to make informed, knowing and intelligent waivers of counsel and guilty pleas, as well as to procedural and substantive due process.

The MIC and MCC allege that Juveniles were falsely imprisoned at the PACC and/or WPACC facilities and that some Juveniles and Parents were required to pay the costs of detention. But some Juveniles were held pre-hearing before they ever met Ciavarella, and Ciavarella placed many of the Juveniles before MAYS existed and/or WPACC opened. The

Complaints assert that some Juveniles were held elsewhere pending placements at the PACC or WPACC facilities. But the allegations show that some Juvenile Plaintiffs were not detained anywhere, and numerous Juveniles did not step foot into either the PACC facility or WPACC facility.

None of the Plaintiffs claim innocence of the crimes with which they were charged or lack of probable cause for imprisonment. At least two years before they filed the Complaints, a large number of Plaintiffs reached majority, necessarily knew what had occurred in Ciavarella's courtroom, that they had been incarcerated and where they were incarcerated, and knew or should have how the facilities came to be and who owned and ran the facilities.

Plaintiffs attribute the payments and coverups thereof to Defendants other than the judges, Powell and Mericle. Plaintiffs do so by liberally sprinkling the Complaints with the general term "defendants" and indiscriminately accusing defendants, generally or by name, of "conspiracy". However, the documents attached to the Complaints do not support such calumny, but, along with public records, are inconsistent with and contradict it. The documents attached to the Complaints, public records and the factual assertions show that Powell was coerced into making payments.

Despite the prolix, redundant, contradictory and scandalous pleadings and attachments, there is no averment of any Provider Defendants' overt predicate act that caused any injury to Plaintiffs.

III. LEGAL STANDARDS

In addition to those set forth in the Joint Memorandum (which Provider Defendants join) the following standards govern a Rule 12(b)(6) motions to dismiss. The Court may consider documents integral to or explicitly relied upon in the complaint or incorporated into the complaint by reference. *In re: Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997); Winer Family Trust v. Queen, 503 F.3d 319, 328 (3d Cir. 2007).* "If a plaintiff's allegations are contradicted by such a document, those allegations are insufficient to defeat a motion to dismiss." *Matusovsky v. Merrill Lynch, 186 F. Supp. 2d 397, 400 (S.D.N.Y. 2002).* "[I]f facts that are alleged to be true in a complaint are contradicted by facts that can be judicially noticed, the contradicted facts in the complaint are not to be deemed as true upon consideration of the motion to dismiss." *Smith v. Litton Loan Servicing, LP, 2005 U.S. Dist. LEXIS 1815, *18 (E.D. Pa. Feb. 4, 2005).* And "[t]he Court... is not obliged to reconcile plaintiff's own pleadings that are contradicted by other matters asserted or relied upon or incorporated by reference by a plaintiff in drafting the complaint." *Fisk v.*

Letterman, 401 F. Supp. 2d 362, 368 (S.D.N.Y. 2005). See also, 5A Wright & Miller, Federal Practice and Procedure Civil 3d § 1357, at 553-557.

IV. STATEMENT OF QUESTIONS PRESENTED

A. Do the allegations of the Complaints state claims under 42 USC §1983?

B. Do the Allegations of the Complaints state Claims under the Racketeer Influenced and Corrupt Organizations Act?

C. Do the allegations of the Complaint state claims for false imprisonment?

D. Do the allegations of the Complaints sufficiently allege causation?

V. ARGUMENT

A. § 1983

1. THE COMPLAINTS' ALLEGATIONS ARE INSUFFICIENT TO SHOW THAT PROVIDER DEFENDANTS ACTED UNDER COLOR OF STATE LAW.

Plaintiffs assert that the Provider Defendants are state actors because they conspired with, and acted jointly with the judges. (MCC, ¶¶ 733, 734, 745-747; MIC, 108, 123, 135)

A conspiracy converts a private person into a state actor only if the private person had specific intent to violated the victim's civil rights. *McCleester v. Mackel, 2008 U.S. Dist. LEXIS 27505, 45-46 (W.D. Pa. 2008).* "To sufficiently allege joint action, the allegations must evidence a "specific goal to violate the plaintiff's constitutional rights by engaging in a particular course of action." *Fisher v. Lynch, 531 F. Supp. 2d 1253, 1264 (D. Kan. 2008) (quoting Gallagher v. Neil Young Freedom Concert, 49 F.3d 1442, 1455 (10th Cir. 1995).* Allegations of recklessness resulting in the constitutional violation are not enough. *Anaya v. Crossroads Managed Care Systems, Inc., 195 F.3d 584, 597 (10th Cir. 2000).*

In *McCleester v. Makel, supra,* a mid level supervisor in the Pennsylvania Department of Labor and Industry alleged that his subordinates conspired with the mid-level supervisor's boss to have the mid-level supervisor fired without due process of law. The alleged deprivation of due process was a pre-termination meeting that lasted for five hours during which interrogators deprived the plaintiff of water, necessary medication and food. The plaintiff alleged that his subordinates conspired to convince the boss to terminate the plaintiff without the benefits of progressive discipline. The court said:

> The allegations against [the subordinates] concern only a conspiracy to convince Reynolds to recommend [plaintiff's] suspension and dismissal without the benefit of progressive discipline. There is no allegation that the five purported conspirators specifically contemplated that [plaintiff's] procedural due process rights would be violated by the deprivation of food, water and medication for a period of five hours... Since the alleged conspiracy between [the subordinates] did not involve a specific intent to deprive [plaintiff] of food, water and medication for the duration of the fact-finding meeting, [plaintiff's] four subordinates could not have acted "under color" of Pennsylvania law for purposes of the procedural due process violation alleged in the Amended Complaint." *McCleester v. Mackel, 2008 U.S. Dist. LEXIS 27505 (W.D. Pa. 2008)*.

Anaya v. Crossroads, supra, is remarkably similar to this action. Crossroads operated detoxification centers. It closed one of them in Trinidad, Colorado because the center was not profitable. Thereafter, Trinidad police were required to transport arrestees in need of detoxification services to Pueblo Colorado, at a cost of $60.00 per trip. Crossroads invited public officials, including local and state police, the county sheriff, city council members and a judge to join an advisory committee to work on reopening the Trinidad center. The committee's meeting minutes showed that Crossroads and local officials agreed to increase referrals to the Pueblo center by a minimum of 50 per month so Crossroads would have a viable application to reopen the Trinidad center. The Trinidad police chief predicted imminent increases in referrals.

Thereafter, the police department issued an order that any officer who had a contact with any person who exhibited any potential intoxication was subject to be evaluated by the detoxification center staff for consideration for treatment. Referrals skyrocketed when Trinidad police began seizing people from porches, bedrooms and back seats of cars. The 10th Circuit said: "But Crossroads mere lack of concern or even recklessness for causing the violation of others' constitutional rights would not seem to rise to the level of Crossroad's liability under section 1983.What might establish such liability, however, is Crossroad's role in creating the unconstitutional detention policy that led to the allegedly illegal seizures." 195 F.3d at 597.

Here, there is no allegation that Provider Defendants had a specific intent to violate Plaintiff's civil rights or had a hand in developing a policy to violate those rights. Rather, they allege a "...conspiracy among the judges, Powell and Mericle to conceal $2.6 million in payments to the judges from owners of juvenile correction facilities for referring children who appeared before Ciavarella to these juvenile corrections facilities." (MCC, ¶ 695) The payments allegedly were for facilitating construction of the PACC facility; assuring that the PACC facility was the only detention facility in Luzerne County; entering into a Guarantee Placement Agreement; aiding in obtaining agreements with the County to house delinquents at the PACC

and WPACC facilities, and actually placing children there. (MCC, ¶¶ 652, 655, 656, 658, 662, 663, 671, 700, 725, 728, 733, 739, 745; MIC, ¶¶ 29, 34, 37, 41-43, 46) The only agents of the Provider Defendants identified in the Complaints are Powell and Zappala. Because Plaintiffs have dismissed Zappala from the action[2], only the allegations against Powell are relevant to Provider Defendants' liability. (In any event, the public record discloses that Zappala had no knowledge or involvement in Powell's conduct. See Provider Defendants' Ex.1, Corrected and Supplemented Record of Powell's Plea Transcript, ¶ 7).The United States Attorney, on the public record in a criminal proceeding in this Court stipulated that Mr. Powell made payments only for the judges' influence to receive a contract to conduct a juvenile facility. (Provider Defendants' Ex. 2, Powell Plea Transcript, p. 21) These assertions show only an agreement to use Provider Defendants' service, not an agreement to violate rights.

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[2] In addition to dismissing Zappala, Plaintiffs filed motions to amend their complaints. The proposed amendments deleted the allegations that Zappala personally took any of the actions alleged in the complaint. Doc. 249, Motion to Amend MIC, Exhibit B, ¶¶ 11, 69, 75, 80, 82, 89, 91, 93, 94, 95, 114, 117D, 136, 137, 139, 142, Wherefore clause, 151, 152, Wherefore clause, 163, 164, 167, Wherefore clause, 180, 181, 183, 184, 202, 203, 204, Wherefore clause, 210, 211, 213, and Wherefore clause; Doc. 250, Motion to Amend MCC, Exhibit B ¶¶ 2, 165, 649, 662, 791, 831, 833, and 834. The Court may consider these public filings as confirmation that no such allegations are extant. Provider Defendants do not attach these pleadings as they are of record in this case.

The law "requires that the private actor at least be 'a willful participant in joint activity with the State or its agents.'" *Harvey v. Plains Twp. Police Department, 421 F.3d 185, 195 (3d Cir. 2005)* (quoting *United States v. Price, 383 U.S. 787, 794, 16 L. Ed. 2d 267, 86 S. Ct. 1152 (1966)*. "[A] corporation may be held liable for the unconstitutional acts of employees where there is a policy, custom, or action by those who represent official policy which causes the injury." *Edwards v. Acadia Realty Trust, Inc., 141 F. Supp. 2d 1340, 1347-1348 (M.D. Fla. 2001).* As discussed below, there are no allegations that support Provider Defendants' policies or customs, and as stated above, Powell's is the only person left in the case that could be a policy maker. But the United States Attorney stipulated on the public record that Powell was not aware of the judges violations of the Juveniles' rights. (Provider Defendants' Exhibit 2, Powell Plea Transcript, pp. 18-19) Therefore, Powell could not have willfully participated in those violations.

"[C]ompelled participation by a private actor may fall outside of the contours of state action." *Harvey v. Plains Twp. Police Department, 421 F.3d at 195.* The MIC's allegations and the public record demonstrate that Powell did not willfully participate in joint activity with the judges. The judges demanded payments from Powell; Ciavarella advised Powell that Powell was making a lot of money from the youth detention center and had

to pay for that privilege, and Powell believed that had he stopped paying the judges, the judges would have retaliated against him and no more juveniles would have been sent to PACC and WPACC facilities. (MIC, ¶ ¶ 46, 59; Provider Defendants' Exhibit 1, Corrected and Supplemented Record of Powell's Plea Transcript, ¶¶ 3- 7) Thus, the judges coerced Powell by official oppression in violation of 18 Pa. C.S. § 5301 by threatening to destroy Powell's business. "[T]he willful participation required under Price means voluntary, uncoerced participation." *Harvey v. Plains Twp. Police Department, supra,* 421 F.3d at 196. Therefore, the Court cannot determine that the Complaints properly assert Powell's willful participation.

2. THE COMPLAINTS' ALLEGATIONS ARE INSUFFICIENT TO SHOW THAT PROVIDER DEFENDANTS HAD POLICIES TO VIOLATE THE JUVENILES' RIGHTS.

a. There are no allegations of express policy.

A private company cannot be liable for constitutional violation absent allegations that the particular constitutional or statutory violation was pursuant to company policy. *Hetzel v. Swartz, 909 F. Supp. 261, 263-264 (M.D. Pa. 1995).* Plaintiffs must allege an express policy, a custom, or a decision by a policy-maker which would be attributable to Provider

Defendants. *Edwards v. Acadia Realty Trust, Inc., supra; Winfree v. Tokai Financial Services, 2000 U.S. Dist. LEXIS 2068, **19-20 (E.D. Pa. 2000).* There is no allegation of express policies to violate civil rights of accused delinquents.

b. The allegations do not establish a custom.

"A course of conduct is considered to be a "custom" when, though not authorized by law, "such practices of state officials [are] so permanent and well settled" as to virtually constitute law." *Andrews v. Philadelphia, 895 F.2d 1469, 1481 (3d Cir. 1990).* This Court should make a common sense determination whether the allegations indicate that the Powell's actions were so permanent and well settled as to virtually constitute law. *Alber v. Illinois Department of Mental Health & Developmental Disabilities, 786 F. Supp. 1340, 1381(N.D. Ill. 1992).* The complaints do not allege payments to judges in multiple counties, or the involvement of a host of Provider Defendants employees. Rather, they aver payments to two judges in one county by two persons, only one of whom had ties to the Provider Defendants, for the limited purposes of building and filling two juvenile detention facilities. Although the payments allegedly affected the rights of multiple Juveniles, there is no allegation that the judges were paid per

child[3]; rather the complaints suggest sporadic payments tied to the completion of construction. Common sense dictates that these allegations do not describe a custom; i.e., the inference of a custom is not plausible.

c. The allegations do not establish action by a policy maker.

As discussed above, only Powell's alleged actions could be relevant to the Provider Defendants' liability. The allegations do support an inference that Powell had policy making authority for the Provider Defendants or acted in such a capacity on their behalf. "[W]hether a particular official has 'final policymaking authority' is a question of state law. *Jett v. Dallas Independent School District, 491 U.S. 701, 737,* 109 S. Ct. 2702 *(1989)(quoting St. Louis v. Praprotnik (485 U.S. 112,* 108 S. Ct. 915 *(1988)).* PACC and WPACC are Pennsylvania limited liability companies. (MIC, ¶¶, MCC, ¶¶) Pennsylvania law provides:

> Subject to subsection (b)[4], the affirmative vote or consent of a majority of the members or managers of a limited liability company entitled to vote on a matter shall be required to decide any matter to be acted upon by the members or managers..."
> 15 Pa. C.S. § 8942(a)

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[3] The allegation that Provider Defendants were paid by child was contradicted by the Plaintiffs' proposed amendments.

[4] Subsection (b) sets forth actions that require a unanimous vote.

The complaints do not allege, and the allegations do not support an inference that Powell is a member or manager of either PACC or WPACC, or holds a majority of votes. MAYS is a Pennsylvania corporation. Under Pennsylvania law, a corporation is managed by or under the control of its directors. 15 Pa. C.S. § 1721(a) The Complaints do not allege that Powell was a director. They assert that Powell was only one owner, shareholder, officer or operator. (MIC, ¶ 4 MCC, ¶ 163) As a general rule, owners and shareholders act by majority vote. 15 Pa, C.S. § 1757(a) "Debtor's 50 percent ownership is not a controlling interest..." *Fayette Bank v. Nesser, 206 B.R. 357, 366 (Bankr. W.D. Pa. 1997).* See, also, *In re Edwards, 228 B.R. 552, 568 (Bankr. E.D. Pa. 1998)* (Where there is a 50%-50% split ownership of a corporation, there is no controlling interest.) Officers have only the authority given by the bylaws or the directors. 15 Pa. C.S 1732(b) But the Complaints do not allege, and the allegations do not support an inference that Powell owned a majority of MAYS or its shares, or had received from the directors or the bylaws sufficient authority as an officer to make policy.

More important, the Complaints' allegations that Powell was an owner, officer, shareholder, and operator of MAYS are contradicted by an attachment to the MIC and the public record of a criminal proceeding in this

Court. Exhibit E to the MIC asserts that MAYS was established by a sole shareholder who was also the CEO; that stock options were available to the principals of WPACC, and distinguishes between the sole shareholder and the principals of WPACC. One of the principals in WPACC was a Luzerne County attorney, a principal and president of the Powell Law Group, P.C. and had initials RJP. These relationships remained constant until May 2008. (MIC, Ex. E, pp. 5, 7, 11, 14, 20) The records of the Pennsylvania Corporation Bureau disclose that a third party was President of MAYS. (Provider Defendants' Ex. 3) Therefore, for purposes of this motion to dismiss, this Court cannot accept as true that Powell was an owner, officer, shareholder, or operator of MAYS. Similarly, any inference that Powell was acting in the capacity of owner, officer, shareholder, or operator of any Provider Defendants when he allegedly paid the judges for referring Juveniles to the facilities is inconsistent with the specific allegations in the complaints, the attachments thereto and the public record, that the payments came from an account of Vision Holdings. (MIC, ¶ 75; MCC, ¶¶ 708, 714, 716, 753; Bill of Information, ¶ 39, Provider Defendants' Ex. 2, Powell Plea Transcript, pp. 11-13). Therefore, the Court should ignore these inferences for purposes of this motion.

As stated above, the public record shows that Powell had no knowledge that the judges were violating the Juvenile's rights and both the public record and the pleadings demonstrate that the judges coerced him into paying them. Therefore, there could not been a policymaker's decision to violate the Juveniles' rights, and these claims should be dismissed

B. RICO

1. THE ALLEGATIONS DO NOT ESTABLISH ANY ACTIONS BY PROVIDER DEFENDANTS

Vicarious liability may be appropriate under RICO. *Petro-Tech, Inc. v. Western Co. of N. Am., 824 F.2d 1349, 1351 (3d Cir. 1987).* But a principal is vicariously liable only if the agent acts within the scope of his employment. Restatement (Second) Torts, ¶¶ 7.03(2)(a), 7.07. For the reasons set forth in argument V.A.2.c., above, Plaintiffs do not plausibly allege that Powell was acting within the scope of his employment for any of the Provider Defendants, and Plaintiffs' RICO claims against the Provider Defendants should be dismissed.

2. THE ALLEGATIONS DO NOT ESTABLISH THAT PLAINTIFFS INJURIES ARISING FROM THE RICO CONSPIRACY WERE CAUSED BY AN OVERT PREDICATE ACT.

Plaintiff's injury must be caused by an overt, predicate act for sub-section (d) liability to attach. *Anderson v. Ayling, 396 F.3d 265, 269 (3d*

Cir. 2005). The alleged injuries were caused by Judge Ciavarella allegedly not explaining the Juveniles' right and issuing court orders, which, in themselves, were not predicate acts. Therefore, this Court should dismiss the § 1962(d) claims.

C. FALSE IMPRISONMENT

1. THE ALLEGATIONS DO NOT ESTABLISH LACK OF PROBABLE CAUSE.

In order to succeed on a claim of false imprisonment, the plaintiff must establish lack probable cause to arrest. *Dintino v. Echols, 243 F. Supp. 2d 255, 267 (E.D. Pa. 2003), aff'd, 91 Fed. Appx. 783 (3d Cir. 2004).* The Juveniles do not allege that their arrests lacked probable cause. Instead, they cite the illegality of Judge Civarella's orders as vitiating probable cause. (MIC, ¶ 170; MIC, ¶ 791) But illegality is insufficient; the orders must have been invalid on their face or issued without jurisdiction. See, *Hamay v. County of Washington, 291 Pa. Super. 137, 143, 435 A.2d 606, 609 (1981) (*In order for County employees enforcing a bench warrant to be liable for false imprisonment "they would have had to have been enforcing orders that were ordered by the judge acting without any jurisdiction at all.") "The torts of false arrest and false imprisonment are essentially the same actions. See *Olender v. Township of*

Bensalem, 32 F. Supp. 2d 775, 791 (E.D. Pa. 1999) (citing *Gagliardi v. Lynn, 446 Pa. 144, 147, 285 A.2d 109, 110 (1971).* An action for false arrest requires that the process used for the arrest was void on its face or without jurisdiction; it is not sufficient that the charges were unjustified." *Tarlecki v. Mercy Fitzgerald Hosp., 2002 U.S. Dist. LEXIS 12937, 8-9 (E.D. Pa. July 15, 2002)* (citing *Strickland v. Univ. of Scranton, 700 A.2d 979, 984 (Pa. Super. Ct. 1997).* This Court has determined that Judge Ciavarella's orders placing the juveniles were facially valid and that he acted within his jurisdiction. *Wallace v. Powell, 2009 U.S. Dist. LEXIS 109163, **37, 48 (M.D. Pa 2009).* (This argument is essentially the same as the immunity defense raised by Vita, which also applies to the Provider Defendants. So the Juveniles do not state a claim for false imprisonment.

2. MAYS COULD NOT HAVE FALSELY IMPRISONED JUVENILES WHO RESIDED AT PACC BEFORE MAY 5, 2005.

The Pennsylvania Corporation Bureau's public records show that MAYS did not exist until March 17, 2005. (Provider Defendants' Ex.?) In June 2005 MAYS entered into an Agreement WPACC to operate the WPACC facility. (MIC, ¶19) But the WPACC facility was not completed and did not begin operations until July 2005. (MCC, ¶ 659, MIC, Ex. E, p. 5) MAYS also contracted to manage the PACC facility. (MIC, ¶ 18) MAYS

entered into that contract on May 5, 2005 with Luzerne County. The complaints allege that Judge Ciavarella committed 115 Plaintiffs to PACC before May 5, 2005[5], and it follows that MAYS could not have imprisoned any of them, falsely or otherwise, and these claims against MAYS should be dismissed.

3. PACC COULD NOT HAVE FALSELY IMPRISONED JUVENILES SENTENCED TO WPAAC, ONLY.

Three Juveniles spent time at the WPACC facility, but not at the PACC facility. (MCC, ¶¶ 261, 550, 557-559) So PACC did not imprison them, and the Court should dismiss their false imprisonment claims against PACC.

4. WPACC COULD NOT HAVE FASELY IMPRISONED JUVENILES SENTENCED TO PAAC, ONLY.

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[5] MCC, ¶¶ 274-277, 288, 295-301, 307*, 310, 331-332, 335- 336, 339-341*, 344 – 346*, 394-395, 411-412, 456, 465-466,469-470, 524-530, 542-544*, 595- 597, 600, 605, 636-637, 640, 645-647; MIC, ¶¶ 76, 82, 89,118, 124, 131, 138, 144, 158, 165, 178, 185, 199, 212, 218, 225, 238, 244*, 251, 258, 265, 294, 301, 315, 322, 328, 335, 342, 349, 355, 376, 409, 423, 437, 444. 457, 470, 483, 491, 497, 511, 517, 532, 539, 559, 572, 606, 627, 647, 653, 659, 665, 678, 685, 692, 727, 734, 740, 746, 759, 772, 778, 792, 799, 805, 811, 817, 842, 849, 870, 877*, 884*, 898, 910, 923, 949, 969; 981, 987, 1000, 1013, 1019,1025, 1047, 1067, 1088, 1101, 1108, 1122, 1129, 1136 (* denotes Juvenile who were detained multiple times. This argument applies only to those detentions that occurred before July 2005.)

Ten Juveniles spent time at both PACC and WPACC facilities. (MCC, ¶¶ 321, 341, 345-347, 399, 445, 591, 597, 600, 606, 611) Counting the three who were in WPACC only, Judge Ciavarella incarcerated only 13 Juveniles at WPACC. So the false imprisonment claims of all Juveniles other than these 13 should be dismissed as against WPACC.

5. THE COMPLAINTS DO NOT SUFFICIENTLY ALLEGE THAT PRE-HEARING DETENTIONS WERE CAUSED BY PROVIDER DEFENDANTS OR LACKED PROBABLE CAUSE.

The complaints identify 10 juveniles who were detained pre-trial. (MCC, ¶¶ 310, 335-336; MIC, ¶¶ 291, 325-327, 335, 375, 424, 461, 554, 567) Plaintiffs allege that the judges effectively caused the PACC facility to be the only detention facility in Luzerne County, but do not allege that any defendant, (let alone Provider Defendants) caused them to be brought to the facility and held for trial, or that absent Defendants' actions, they would not have been detained pre-trial at the River Street facility if it still existed. There are not even conclusory allegations that the pre-trial detentions lacked probable cause. This Court should dismiss these false imprisonment claims.

6. THE STATUTE OF LIMITATIONS ON FALSE IMPRISONMENT HAS RUN AS TO THOSE JUVENILES WHO REACHED MAJORITY TWO YEARS BEFORE FILING THIS ACTION.

The statute of limitations on false imprisonment is two years. 42 Pa. Cons. Stat. Ann. § 5524(1); *Akrie v. City of Pittsburgh, 2009 U.S. Dist. LEXIS 52231, 10-11 (W.D. Pa. 2009).* "[T]he statute of limitations for claims for false arrest and false imprisonment accrue at the time of arrest and detention." *Napier v. City of New Castle, 2007 U.S. Dist. LEXIS 51297 (W.D. Pa. 2007).* The Plaintiffs do not allege that Provider Defendants were involved in their arrests, so as to the Provider Defendants the limitations began to run on the date they were detained. Plaintiffs seek to avoid the statute by alleging inability to discover and/or fraudulent concealment of necessary facts. (MIC, ¶¶ 82-83) Under Pennsylvania law, limitations begin to run when the plaintiff knows that the plaintiff is injured by another person's conduct. *Piccolini v. Simon's Wrecking, 686 F. Supp. 1063, 1073 (M.D. Pa. 1988).* The injured party's ignorance of having a cause of action, that the other party's conduct was wrongful, or the identity of the tortfeasor does not toll the statute. *Price v. Johns-Manville Corporation, 336 Pa. Super. 133, 485 A.2d 466 (1984); Pocono International Raceway, Inc. v. Pocono Produce, Inc., 503 Pa. 80, 468 A.2d 468 (1983).* These Plaintiffs necessarily knew what occurred at their hearings, as did the attorneys whom most of the children had with them

when appearing before Ciavarella. (MCC, ¶¶ 178[6], 658) So did the District Attorney, Public Defender and probation staff. (Doc, 250, Motion to Amend MCC, Ex. B., ¶ 824, Doc. 249, Motion to Amend MIC, Ex. B., ¶¶ 98-99) Plaintiffs also knew that Judge Ciavarella confined them, and where he confined them. "When the gravamen of the claim is some sort of wrongful confinement, the plaintiff naturally knows or has reason to know of the injury from the fact of confinement itself." *Alber v. Illinois Dep't of Mental Health & Developmental Disabilities, 786 F. Supp. 1340 (N.D. Ill. 1992).* It was no secret that Ciavarella was placing children contrary to recommendations of probation officers, and ordering that placements to PACC be ramped up. (MCC, ¶ ¶ 675, 678; Doc. 249, Motion to Amend MIC, Ex. B., ¶¶ 96-97) Conahan publically announced the closing of the River Street facility. He asked the County Commissioners to stop funding River Street, and they did. (MCC, ¶ 654; Doc. 250, Motion to Amend MCC, Ex. B., ¶¶ 652, 656, 657) The County Commissioners were in a public controversy about building the County's own new detention center, and the County's contract to use the PACC facility. (MCC, ¶ 658; Doc. 250, Motion to Amend MCC, Ex. B., ¶¶ 664, 671, 673;Doc. 249, Motion to Amend MIC,

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[6] Only 1,200 children appeared before Ciavarella unrepresented. (MCC, 178)

Ex. B., ¶¶ 31-33, 37) The Pennsylvania Department of Public Welfare tried to stop the Commissioners from entering into the contract. (Doc. 250, Motion to Amend MCC, Ex. B., ¶¶ 673, 678; Doc. 249, Motion to Amend MIC, Ex. B., ¶¶ 31-33, 37) The County Controller subpoenaed a copy of the lease, the local newspaper intervened in PACC's lawsuit to quash the subpoena, and the Superior Court opened the records of proceeding to the public. (Doc. 250, Motion to Amend MCC, Ex. B., ¶¶, 679, 682, 687; Doc. 249, Motion to Amend MIC, Ex. B., ¶¶ 38, 41, 46). Thus, the pleadings and public record contradict the Plaintiffs alleged inability to determine what had happened to them and who was involved in detaining them.

The Pennsylvania Minority Tolling Statute tolls the statute only until the minor turns 18, after he or she has the same time to commence an action as would any other person: in this case, two years. 42 Pa. C.S. 5533(b), *Allen v. Parkland Sch. Dist., 2003 U.S. Dist. LEXIS 17725, * 5 (E.D. Pa. 2003).* The Complaints establish that 111 plaintiffs reached majority at least two years before this action commenced. [7] This Court should dismiss these claims of false imprisonment.

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[7] MCC, Jeffrey Bruno ¶ 274, Scott Bukoski ¶ 278, William Dixon ¶ 290, Rachelle Farber ¶ 295, Wayne Gyle ¶ 309, Edward Kenzakoski III ¶ 343, Anthony Millan ¶ 360, Steven Palchanis, Jr. ¶ 379, Jessica Thurston ¶ 410, Michael Vitali ¶ 414, Frank Weber ¶ 419, John Ashford, Jr. ¶ 427,

D. All Counts

1. THE COMPLAINTS DO NOT PLAUSIBLY ALLEGE CAUSATION

Christian Barnes ¶ 432,Shane Bly ¶ 438, Daryl Charles ¶ 447, William Clarke ¶ 451, Glen Cooper ¶ 455, Richard Copeland II ¶ 459, Chad Derhammer ¶ 464, Matthew Dougherty ¶ 474,Tiffany Harrison ¶ 517, Edward Kane, Jr. ¶ 523, Matthew Kopetchny ¶ 537, Magee Mott ¶ 541, Lisa Scarbrough ¶ 566,William Conway ¶ 594, Christian Ryan ¶ 599, Jared Padden ¶ 639, Paul Schweizer ¶ 644; MIC, Jeffrey Arnott, Jr. ¶ 81, Kyle Avery ¶ 88, Michael Bodnar ¶ 123, Josh Cragle ¶ 143, Amanda Eddy ¶ 177, Jamie Trocki ¶ 184, Jesse Hartman ¶ 217, Jeffrey Hoyt ¶ 237, Robert Hunter ¶ 243, David Ide ¶ 250, Eric Idle ¶ 257,Jennifer King ¶ 293, Nicole Kotz ¶ 300, Dyllon Rybka ¶ 314, William von Tulganburg ¶ 327, Anthony Mancia ¶ 334, Sarah Martz ¶ 341, Evan Maurer ¶ 348, Ryan McManus ¶ 375, Matthew Milne ¶ 395, Randy Ozehoski ¶ 408, Eric Parsons ¶ 415, Jessica Silva ¶ 422, John Schatzel ¶ 436, Theodore Sherill ¶ 456, Justin Soboski ¶ 469, Mariah Stewart ¶ 482, Paul Stolarik ¶ 490, Amy Ward ¶ 510, George Vermack ¶ 516, David Sisk ¶ 531, Skyler Dane Williams ¶ 538, Ashley Woolbert ¶ 545, Jamie Zaccagni ¶ 558, Kelcy Morgans ¶ 591, Karlie Schmeer ¶ 605, Kimberly Delaney-Goggin ¶ 626, Derek Klick ¶ 646, Larry M. Mulenberg, IV ¶ 652, Deanna O'Boyle ¶ 658, Donna Olsen ¶ 664, Justin Rosser ¶ 677, David Wallace ¶ 691, Christopher Bower ¶ 733, Ian Alexander ¶ 739, Carl N. Busch ¶ 758, Michael Salko, Jr. ¶ 771, Keith Perschau ¶ 777, Joshua Fromel ¶ 791, Matthew Wrhel ¶ 804, Heather Walton ¶ 810, Rebecca Hackney ¶ 816, Maria Brooks ¶ 834, Heath Houseknecht ¶ 841, Zachary Richards ¶ 848, David Gazdziak ¶ 869, Tiffany Wren ¶ 876, Richard Maguschak ¶ 897, Mark Soltis ¶ 909, Christal Lee Mutua ¶ 948, Nicholas Miller ¶ 962, Timothy Bantell ¶ 968, Stacey Hvizda ¶ 974, Kelly M. Gray-Wasielewski ¶ 986, Joseph Austra ¶ 992, Angela Bezdziecki ¶ 999, James M. Hughes ¶ 1012, Christina Jennings ¶ 1018, Jason Kisthardt ¶ 1024, Daniella Ormsby ¶ 1060, Autumn Parry ¶ 1066, Joseph DePrimo ¶ 1087, Michelle Yurkanin ¶ 1100, Baily Sieminskip-Hess ¶ 1107

a. The complaints do not plausibly allege causation as to Juveniles who were not placed at all or not placed at either the PACC facility or the WPACC facility.

The basic premises of the Complaints are that the Defendants agreed that Judge Ciavarella would refer children to the PACC and/or WPACC facilities, and that Judge Ciavarella violated their rights in order to do so. A minor premise is that Judge Ciavarella placed some Juveniles in other facilities and transferred them to the PACC and/or WPACC facilities when openings arose there. Five never left home. (MCC, ¶¶ 503, 506, 539, house arrest) (MCC, ¶¶, 520, 587, probation) Thirty-five never set foot in either the PACC or the WPACC facility. (MCC, ¶¶ 196, 203-207, 215, 222, 230-231,241, 247, 265, 280, 293, 304, 335, 357, 361, 365, 377, 391, 403, 430, 434, 440-441, 449, 477, 481, 485, 495, , 511, 515, 525, 535, 564, 569, 573, 578, 626) It simply is not plausible that a plan to place children at the PACC and/or WPACC caused the violation of the rights of Juvenile's not placed in either facility, and the Court should dismiss all of their claims.

b. The complaints do not plausibly allege causation as to any Juveniles

The allegations show that more than 5,160 children appeared before Ciavarella during the relevant time period, and that he violated all of their rights. (MCC, ¶ 688) However, Ciavarella adjudicated only 2,500 of them

delinquent and removed only 1,000 from their homes. (MCC, ¶ 178) As shown above, he placed only a fraction of those in either the PACC facility or the WPACC facility. It simply is not plausible that a judge dedicated to putting kids into the PACC and/or WPACC facilities would free so many or send so many to other facilities. Thus, the Complaints do not plausibly allege causation as to any Juveniles, and the Court should dismiss them *in toto*.

VI. CONCLUSION

WHEREFORE, MAYS, PACC AND WPACC respectfully move this Court to dismiss Plaintiffs' complaints with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Bernard M. Schneider, hereby certify that, on this 22nd day of March, 2010, the foregoing Brief was filed and made available via CM/ECF to all counsel of record. Additionally, the foregoing response was served by first class mail upon the following:

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